



C.A. 909/94

(2)

/- APPEAL OF PRISONER -/

No. 4028

Name ओलम् @ ओलम् @ अमल

Father's Name रामसिंह

Residence ग्राम - भारकेल ब्रावगमुज

Age 26

Sentenced to आजीवन कारावास

on

18.11.93

under Section 302 I.P.C. by सत्र न्यायाधीश जगदलपुर

S.T.No. 233/91

It is explained to the prisoner that if he states or Wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may be heard at all if the prisoner states that he does not wish to be represented by legal practitioner the Court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement: No.
2. Date of which copy received:- 18.11.93
3. Date on which Appellisent:- 23.11.93
4. Whether the prisoner wished to be represented or not

Yes/No.

No. 4028 Name ओलम् @ ओलम् @ अमल श्री ० रामसिंह

Continued in 29/9/91 to 17/11/93 Jail जगदलपुर बस्तर

No. 2173 / Octagon / 93 Dated 23/11/93

Forwarded to the CHIEF JUDICIAL MAGISTRATE J. J. J. together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent-Central/Distt./
Sub Jail.

Date of receipt in C.J.M's Office.

Date of receipt of record of accompany.

Memo of Appeal of the Appellate Court.

No. 27/93

Dated 28/11/93

Forwarded to the Session Judge Jagdalpur

C.J. Magistrate

Date of receipt of Appellate Court

आदेश पत्रक

मामला क्रमांक Cr. App. 909/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH:</u> <u>HON'BLE MR. L.C.BHADOO &</u> <u>HON'BLE MR. VIJAY. K. SHRIVASTAVA, JJ</u> <u>06.12.2005</u> Mrs. Kiran Jain, counsel for the appellant. Mr. Ashish Shukla, Additional Public Prosecutor for the State. Oral judgment. By this criminal appeal under Section 374 (2) of the Cr.P.C. through the Superintendent, Central Jail, Jagdalpur, appellant Olmu @ Almu has questioned the legality of judgment of conviction and sentence dated 18th November, 1993 passed by learned Sessions Judge, Bastar at Jagdalpur in S.T.No.233/91 whereby learned Sessions Judge after holding the accused/appellant guilty for committing murder of Neelaram convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life. The prosecution story, in brief, is that on 27.4.1991 at about 8.00 p.m. in the evening Aasmati Bai (PW-1) after giving food to her parents went in search of her husband Neelaram, who met her near the Well of Kandya. When Aasmati Bai along with her husband Neelaram reached in the courtyard of the house, the accused /appellant, who was sitting near the corner of a wall, assaulted her husband Neelaram with a wooden club on his head, as a result of which he fell down on the earth and became unconscious. She raised the cries on which Somari Bai came on the spot. The accused/appellant again assaulted Neelaram with the same club on his head & near the ear. The blood started oozing out of the injuries	

[पीछे देखिये]

आदेश पत्रक

मामला क्रमांक

Cr. 909/84

सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	-2-	
	received by Neelaram. The accused/appellant ran away from the scene of occurrence. Dayaram & Mundra came on the spot to whom Aasmati Bai (PW-1) narrated the story. Soan Singh (PW-2) & Prem Singh (PW-3) took Neelaram in a bullock cart to Maharani Hospital, Jagdalpur where doctor declared Neelaram brought dead. Aasmati Bai lodged the report (Ex.P-1) at the Police Station Nagarnar. The Investigating Officer after registering the case took up the investigation and after giving notice to the Panchaas prepared the Panchnama (EX.P-3) of the dead body and sent the dead body of Neelaram for postmortem examination to the Maharani Hospital, Jagdalpur. The Investigating Officer also took into possession the plain soil and blood stained soil from the place of occurrence. The weapon of offence i.e. wooden club was recovered on 28.4.1981 at the instance of the accused/appellant under Ex.P-5. Dr. A.S. Khan (PW-5) conducted the postmortem on the body of deceased Neelaram and prepared the postmortem report Ex.P-9. After completion of the investigation, the charge sheet was filed against the accused/appellant in the Court of learned Judicial Magistrate 1st Class, Bastar at Jagdalpur, who in turn committed the case to learned Sessions Judge, Bastar at Jagdalpur for trial. The prosecution in order to prove the offence against the accused/appellant examined six witnesses. Learned Sessions Judge recorded the statement of accused/appellant under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that on the fateful day the deceased was assaulting his wife i.e. PW-1 Aasmati Bai, who is his mother-in-law	

[पीछे देखिये]

आदेश पत्रक

मामला क्रमांक

G.A. 909/94

सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	also, when he was intervening in order to protect his mother-in-law, in that process Neelaram received injuries and fell down on the earth. Learned Additional Sessions Judge, after hearing the Additional Public Prosecutor & counsel for the accused convicted and sentenced the accused/appellant herein in the manner as mentioned in the earlier part of this judgment. We have heard Mrs. Kiran Jain, counsel for the appellant & Mr. Ashish Shukla, Additional Public Prosecutor for the State. Learned counsel for the accused/appellant did not dispute the fact that death of Neelaram was homicidal in nature. Apart from that from the evidence of eyewitness Aasmati Bai (PW-1) and Dr. A.S. Khan (PW-5) that there were three injuries on the head of deceased Neelaram, a contusion on the left eye in the size of 1" x ½", one lacerated wound over the left eye on the parietal region in the size of 2"x ½" x ½", another lacerated wound above the left ear in the size of 1" x 1" x 1½", parietal bone was found fractured, frontal bone above the nose was also found fractured. Injury was anti-mortem in nature and nature of death was homicidal. In view of the above evidence, it stands proved that the death of deceased Neelaram was homicidal in nature. As far as the question of involvement of accused/appellant in committing the murder of Neelaram is concerned, learned counsel for the accused/appellant while inviting attention of the Court towards Para-6 of evidence of PW-1 Aasmati Bai i.e. wife of deceased argued that deceased Neelaram was in a drunken condition and was attacking her with the wooden club, the accused/appellant	

[पीछे देखिये]

आदेश पत्रक

मामला क्रमांक

909/94

सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	intervened and in that process he snatched the wooden club from Neelaram and assaulted him on his head, without any preparation or premeditation on a spur of moment in a heat of passion. Therefore, the offence against the accused/appellant does not travel beyond Section 304 Part-II of the Indian Penal Code. On the other hand, learned Additional Public Prosecutor for the State Mr. Ashish Shukla supported the impugned judgment of the trial Court. From the evidence of PW-1, Aasmati Bai it is established that the accused/appellant assaulted the deceased with a wooden club and the evidence of PW-1 stands corroborated by the medical evidence of Dr. A.S. Khan (PW-5), who examined the dead body of deceased Neelaram and found fracture on the frontal and parietal bones. Now coming to the question as to what offence was committed by the accused/appellant. PW-1-Aasmati Bai, who was an eyewitness to the crime and wife of deceased, has stated in Para-6 of her evidence that her husband Neelaram was beating her after consuming liquor and the accused/appellant herein tried to intervene and in that process the accused assaulted the deceased on his head, as a result of which he fell down on the earth and therefore he was taken to the hospital where doctor declared him brought dead. From this evidence, it can be inferred that the accused/appellant has not attacked the deceased after preparation or pre-meditation or with the intention to cause death of Neelaram. However, it is established that the accused/appellant had the knowledge that while assaulting with	

[पीछे देखिये]

आदेश पत्रक

मामला क्रमांक

G.A. 909/94

सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	- 5 -	
	a wooden club on the head, that he may likely to cause death and he assaulted Neelaram on a spur of moment when Neelaram was beating his wife. Therefore, in view of the above facts the offence of murder is not proved against the appellant and on the facts narrated above, the offence against the accused/appellant under Section 304 Part-II of the IPC was made out. In the result, the appeal is partly allowed. The conviction and sentence passed under Section 302 of the I.P.C. are set aside and accused Omlu @ Amlu is acquitted of the charge under Section 302 of the IPC and sentence awarded under that section, instead thereof appellant Omlu @ Amlu is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 08 years. Accused Omlu was in custody from 28.4.1991 to 10.5.2000 and thereafter, he is on bail, which is not disputed by learned Additional Public Prosecutor for the State, therefore, this period shall be set-off under Section 428 of the Cr.P.C. The appellant need not to surrender the bail bonds. The bail bonds are discharged. Certified copy as per rules.	
	Sd/- L.C.BHADOO Judge	Sd/- V.K.Shrivastava Judge

Roshan/-

[पीछे देखिये]